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Attorneys for Plaintiff
U.S. SPECIALTY INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. SPECIALTY INSURANCE
COMPANY, a Texas corporation

Plaintiff,

v.

FRYS ELECTRONICS, INC., a California
corporation

Defendant.

CASE NO.:

COMPLAINT FOR:

- 1. BREACH OF CONTRACT**
- 2. INDEMNITY**
- 3. QUANTUM MERUIT**

COMPLAINT

Plaintiff, U.S. Specialty Insurance Company, a Texas corporation (“Plaintiff”),
states as follows:

PARTIES

1. Plaintiff is a Texas corporation with its principal place of business in
Houston, Texas.

2. Defendant, Frys Electronics, Inc. (“Frys”) is a California corporation with its
principal place of business in San Jose, California.

JURISDICTION AND VENUE

3. This Court has diversity jurisdiction of this action under 28 U.S.C.
§1332(a)(1), because the matter in controversy exceeds the sum of \$75,000, exclusive of

1
2 interest and costs, and there is complete diversity between the parties.

3 4. Venue of this action in this Court is proper under 28 U.S.C. § 1391(b)(1)
4 because the Defendants reside in this district in the State of California.

5 **GENERAL ALLEGATIONS**

6 5. Plaintiff and Onkyo U.S.A. Corporation (“Onkyo”) entered into a Trade
7 Credit Insurance Policy – MultiDebtor (“Policy”) under which Plaintiff insured certain
8 trade credit debtors of Onkyo. One of those was Frys, whom Onkyo sold material to on
9 credit. The Policy provided, amongst other things, that in the event a claim is paid,
10 Onkyo assigns to Plaintiff, all of its right, title and interest with respect to the debt that
11 makes up the claim.

12 6. Onkyo is a supplier of audio, speaker and related electronic components.
13 Defendant Frys is a big-box retailer that sells electronics throughout the country.

14 7. On or about April 12, 2002 Onkyo and Defendant Frys entered into a credit
15 agreement whereby Onkyo would sell to Defendant Frys, home audio, speakers and
16 related electronics on credit (“Credit Agreement”). A true and correct copy of the Credit
17 Agreement is attached hereto as **Exhibit 1** and incorporated herein by reference.

18 8. Frys failed to pay Onkyo for a number of purchases between 2017 and 2019
19 and Onkyo ultimately made a claim on the Policy.

20 9. Plaintiff investigated the claim and determined it to be valid and paid the
21 claim in the sum of \$331,362.00.

22 10. Pursuant to the terms of the Policy, Onkyo’s rights under the credit
23 agreement and the debt owed by Frys were assigned to Plaintiff upon Plaintiff’s payment
24 of the claim.

25 **FIRST CLAIM FOR RELIEF**

26 **(Breach of Contract: Against Frys)**

27 11. Plaintiff incorporates herein by reference as though fully set forth herein, its
28 allegations contained in paragraphs 1 through 10.

1 12. Onkyo performed all its requirements under the credit agreement with
2 Defendant Frys.

3 13. Plaintiff is assignee of all of Onkyo's rights under the credit agreement with
4 respect to the amounts paid under the claim.

5 14. Defendant Frys has breached the credit agreement by failing to pay amounts
6 due and owing under the credit agreement.

7 15. As a result of the breach by Defendant Frys, Plaintiff has been damaged in
8 the principal amount of \$331,362.00 plus interest at the maximum permitted rate under
9 the law, until paid.

10 **SECOND CLAIM FOR RELIEF**

11 **(Indemnity: Against Frys)**

12 16. Plaintiff incorporates herein by reference as though fully set forth herein, its
13 allegations contained in paragraphs 1 through 10.

14 17. Frys is obligated to reimburse Plaintiff in full, for any and all payments
15 made to Onkyo on Frys behalf.

16 **THIRD CLAIM FOR RELIEF**

17 **(Quantum Meruit: Against Frys)**

18 18. Plaintiff incorporates herein by reference as though fully set forth herein, its
19 allegations contained in paragraphs 1 through 10.

20 19. Within the last four years, Plaintiff provided audio, speaker and related
21 electronic components to Defendant Frys at the special request of Frys. Frys knew that
22 these products were being provided and agreed to pay their reasonable value to Onkyo.

23 20. The fair and reasonable value of the product provided to Frys is
24 \$331,362.00.

25 21. No part of this sum has been paid despite repeated requests from Plaintiff for
26 payment and there is now due and owing from Defendant Frys to Plaintiff, as assignee of
27 the rights of Onkyo, the amount of \$331,362.00, plus interest at the maximum permitted
28 rate under the law, until paid and costs of suit.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

ON THE FIRST, SECOND AND THIRD CLAIMS:

1. For the sum of \$331,362.00 from Defendant Frys Electronics, Inc., a California corporation plus interest at the maximum legal rate, until paid and costs of suit.

ON ALL CLAIMS:

2. For costs of suit herein incurred;

3. For such other and further relief as the Court may deem proper.

Dated: April 21, 2020

LANAK & HANNA, P.C.

By: /s/ Michael K. Murray
MICHAEL K. MURRAY
Attorney for Plaintiff
U.S. SPECIALTY INSURANCE
COMPANY

EXHIBIT 1

Rec 4/23

ONKYO
IMAGINATIVE SIGHT & SOUND**ONKYO U.S.A. CORPORATION**DATE: 4/12/02**ONKYO CREDIT APPLICATION**

#

| | | | | | |
|---|------|--|---------------|--|--|
| FIRM NAME <u>Fry's Electronics, Inc.</u> | | DBA | | EMAIL | |
| STREET ADDRESS <u>6000 E. Brokaw Rd</u> | | PHONE <u>408-487-4500</u> | | FAX <u>408-487-4741</u> | |
| CITY <u>San Jose</u> | | STATE <u>CA</u> | | ZIP <u>95112</u> | |
| FULL NAME OF OWNER OR OWNERS (or an authorized officer of corporation) LIST HOME ADDRESS & ZIP CODE FOR PARTNERSHIP OR INDIVIDUAL | | TITLE | | PARTNERSHIP % OR % OF STOCK OWNED | |
| <u>See Attached</u> | | | | | |
| PLEASE <input checked="" type="checkbox"/> ONE | | INDIVIDUAL <input type="checkbox"/> | | PARTNERSHIP <input type="checkbox"/> | |
| | | CORPORATION <input checked="" type="checkbox"/> | | FED. TAX <input type="checkbox"/> | |
| NAME & ADDRESS OF PARENT CO. IF A SUBSIDIARY | | D&B NO. | | S.S. # IF INDIVIDUAL | |
| | | | | | |
| STATE OF INCORP. <u>California</u> | | # STORES <u>20</u> | | EMPLOYEES | |
| TYPE OF BUSINESS <u>Consumer Electronics</u> | | DATE STARTED <u>5/85</u> | | | |
| ESTIMATED ANNUAL SALES <u>—</u> | | PROJECTED ANNUAL ONKYO VOLUME \$ <u>—</u> | | | |
| FORMER BUSINESS | | LOCATION | | | |
| OWN OR RENT BUILDING—IF RENT—FROM WHOM? | | VALUE | | | |
| MAJOR LINES CARRIED: | | | | | |
| | | | | | |
| TRADE REFERENCES: List at least six (6) References | | | | | |
| 1 | NAME | ADDRESS | TELEPHONE # | FAX # | |
| 2 | NAME | ADDRESS | TELEPHONE # | FAX # | |
| 3 | NAME | ADDRESS | TELEPHONE # | FAX # | |
| 4 | NAME | ADDRESS | TELEPHONE # | FAX # | |
| 5 | NAME | ADDRESS | TELEPHONE # | FAX # | |
| 6 | NAME | ADDRESS | TELEPHONE # | FAX # | |
| PLEASE SIGN ATTACHED BANK RELEASE LETTER | | | | | |
| BANK REFERENCE—Name and Address | | | TEL. # | FAX # | |
| BANK OFFICER | | ACCT. #—CHECKING | ACCT. #—LOANS | SECURED YES <input type="checkbox"/> NO <input type="checkbox"/> | |
| AMOUNT OF FIRST ORDER | | MONTHLY PURCHASES ESTIMATE | | | |
| NAME OF REPRESENTATIVE WHO GAVE YOU THIS FORM <u>Mark Friedman</u> | | | | | |
| CREDIT LIMIT <u>1 million</u> | | TERMS <input type="checkbox"/> REGULAR <input type="checkbox"/> SPECIAL | | CREDIT MANAGER <u>6/5/02</u> | |
| DATE | | SALES | | | |

(OVER)

| FINANCIAL STATEMENTS | | |
|---|--|---------------------|
| Fiscal Year Ends _____ | Name of Your Independent Accountant _____ | Telephone No. _____ |
| Are Your Accounts Receivable and/or Inventory Pledged as Security <input type="checkbox"/> Yes <input type="checkbox"/> No | If Yes: Name and Address of Secured Party(s) is Name _____ Telephone No. (_____) _____ Address _____ | |

A current complete financial statement that includes both Profit and Loss and Balance Sheet (past fiscal year end and interim information if appropriate) must either accompany this application or be forwarded to the ONKYO Credit Department.

The undersigned hereby authorizes ONKYO to make such inquiries as are necessary to obtain credit information.

APPLICANT'S SIGNATURE ATTESTS FINANCIAL RESPONSIBILITY, ABILITY AND WILLINGNESS TO PAY OUR INVOICES IN ACCORDANCE WITH TERMS. INDICATES AN AGREEMENT AND TO SIGN A SECURITY AGREEMENT SECURING ONKYO EQUIPMENT IF SO DESIRED BY ONKYO.

THE ABOVE INFORMATION AS WELL AS THAT GIVEN ON THE REVERSE SIDE IS FOR THE PURPOSE OF OBTAINING CREDIT AND IS WARRANTED TO BE TRUE. I/WE HEREBY AUTHORIZE THE FIRM TO WHOM THIS APPLICATION IS MADE TO INVESTIGATE THE REFERENCES LISTED PERTAINING TO MY/OUR CREDIT AND FINANCIAL RESPONSIBILITY.

Authorized Signature _____

Title _____

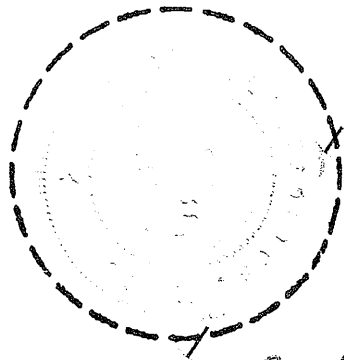
Date _____

Authorized Signature _____

Title _____

Date _____

If Corporation, Affix Seal Below.



Witnessed By _____

Chris McIntire
Chris McIntire



Artistry in Sound

ONKYO U.S.A. CORPORATION

18 Park Way, Upper Saddle River, NJ 07458
Tel: (201) 785-2600 Fax: (201) 785-2650

ONKYO USA CORPORATION

CREDIT INFORMATION RELEASE AUTHORIZATION

The undersigned has requested ONKYO USA CORPORATION to extend credit to it on a continuing basis.

In order to enable ONKYO USA CORPORATION to make an initial credit investigation, authorization is hereby given you to disclose to and to discuss with ONKYO USA CORPORATION all information and documents you may have concerning the credit history and credit status of the undersigned.

Dealer Name

Fry's Electronics Inc

Signature

[Handwritten Signature]



CREDIT REFERENCES

OFFICERS:

John C. Fry, CEO
 William R. Fry, President
 David A. Fry, Chief Information Officer
 Kathryn J. Kolder, Executive Vice President & Corporate Secretary

HOME OFFICE ADDRESS:

600 E. Brokaw Rd. - San Jose, CA 95112 - 408-487-4500

COMPANY INFORMATION:

Corporation Established March 1985
 Director of Finance: Donald A. Madrid
 Controller: Chris Schieber

Federal Tax ID # [REDACTED]
 CA Resale # SR Y GH 26-762263
 AZ Resale # 07547835U
 TX Resale # 1-77-0062030-9

STORE LOCATIONS

| # | LOCATION | ADDRESS & ZIP CODE | TELEPHONE | FAX | OPENED |
|----|----------------------|----------------------------------|--------------|--------------|-------------------------------|
| 3 | Palo Alto, CA | 340 Portage Ave. 94306 | 650-496-6000 | 650-496-6018 | July 1990 |
| 5 | Manhattan Beach, CA | 3600 Sepulveda Blvd. 90266 | 310-364-3797 | 310-364-3718 | February 1992 |
| 6 | Campbell, CA | 600 E. Hamilton Ave. 95008 | 408-364-3700 | 408-364-3718 | August 1993 |
| 7 | Fountain Valley, CA | 10800 Kalama River Ave. 92708 | 714-378-4400 | 714-378-4418 | October 1993 |
| 8 | Woodland Hills, CA | 6100 Canoga Ave. 91367 | 818-227-1000 | 818-227-1018 | June 1995 |
| 9 | San Jose, CA | 550 E. Brokaw Road 95112 | 408-487-1000 | 408-487-1018 | March 1996 |
| 10 | Anaheim, CA | 3370 E. La Palma Ave. 92806 | 714-688-3000 | 714-688-3018 | April 1996 |
| 11 | Burbank, CA | 2311 N. Hollywood Way 91505 | 818-526-8100 | 818-526-8118 | June 1996 |
| 12 | Sunnyvale, CA | 1077 Arques Ave. 94085 | 408-617-1300 | 408-617-1318 | October 1990 - Reloc Mar 1998 |
| 14 | Sacramento, CA | 4100 Northgate Blvd. 95834 | 916-286-5800 | 916-286-5818 | April 1997 |
| 15 | San Diego, CA | 9825 Stonecrest Blvd. 92123 | 858-514-4500 | 858-514-4518 | May 1997 |
| 16 | Wilsonville, CA | 29400 S.W. Towncenter Loop 97070 | 503-570-6000 | 503-570-6018 | June 1997 |
| 17 | Tempe, AZ | 2300 W. Baseline Rd. 85283 | 602-659-8500 | 602-659-8518 | August 1997 |
| 18 | Dallas, TX | 12710 Executive Drive 75238 | 214-342-5900 | 214-342-5918 | November 1997 |
| 19 | Arlington, TX | 102 East I-20 76018 | 817-557-6500 | 817-557-6518 | October 1997 |
| 20 | Phoenix, AZ | 3035 W. Thunderbird Rd. 85029 | 602-467-2000 | 602-467-2018 | November 1999 |
| 21 | Fremont, CA | 43800 Osgood Road 94539 | 510-252-5300 | 510-252-5318 | July 1988 - Reloc Dec 1998 |
| 22 | Austin, TX | 12707 N. Mopac Expwy 78727 | 512-733-7000 | 512-733-7018 | September 2001 |
| 28 | City of Industry, CA | 13401 Crossroads Pkwy No. 91746 | 562-463-2400 | 562-463-7018 | January 2002 |
| 23 | Houston, TX | 10241 N. Fwy I-45 77037 | 281-931-2200 | 281-931-2218 | February 2001 |
| 40 | Outpost.Com | On-line Web-Site | ---- | ---- | November 2001 |

CREDIT REFERENCES

| COMPANY | ADDRESS | CITY / STATE / ZIP | CONTACT INFORMATION |
|--------------------------|-------------------------|---|---|
| Intel Corporation FMI-78 | 1900 Prairie City Rd. | Folsom, CA 95630 | By fax only 916-356-3240 |
| Compaq Computer Corp. | P.O. Box 692000 | Houston, TX 77269-2000 | By fax only 281-514-7778 |
| Panasonic Co. West | 6550 Katella Ave. | Pan Zip 18B-5 Cypress, CA 90630-5102 | Ph 714-373-7352 Prefer by fax 714-373-7349 |
| Maytag | 403 W. Fourth St. North | Newton, IA 50208 | Ph 641-787-8696 Fax 5641-787-8793 |
| Ingram Micro, Inc. | 1600 E. St. Andrew Plc | Santa Ana, CA 92799 | Information provided by mail only. |
| Sony Corporation | 3300 Zanker Road | San Jose, CA 95124 | Information provided by mail only. |

BANK REFERENCE: COMERICA BANK - CALIFORNIA - 250 Lytton Ave. - Palo Alto, CA 94301
 Comerica Securities Account # [REDACTED] - Acct Rep: Bob Muzio - Tel: 650-462-6082
 Concentration Account # [REDACTED] - Acct Rep: Robert Gajewski - Tel: 650-462-6151